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November 29, 1994

William Caton  
Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Re: Petition for Declaratory Relief in the Form of  
Clarification of Section 317 of the Communications  
Act of 1934 Regarding Sponsorship Identification  
for Infomercials, RM No. 7984

Dear Mr. Caton:

The Center for the Study of Commercialism, Center for Media Education, Consumer Federation of America and Telecommunications Research and Action Center ("Petitioners") submit this letter in response to the October 7, 1994 letter of the National Infomercial Marketing Association ("NIMA"). NIMA's letter asked the Commission to deny the relief requested in Petitioners' September 8, 1994 letter, supplementing their January 3, 1992 Petition to require continuous sponsorship identification for program-length commercials ("Infomercial Petition").

Petitioners asked the Commission to decide their pending sponsorship identification Petition and used "Main Floor" as an example of a program that necessitates continuous sponsorship identification. NIMA claims that Petitioners lacked a factual basis for their request because they relied on allegedly inaccurate press reports. (NIMA Letter at 2.) However, at the time the September 8th letter was written, the only information available to Petitioners was a Wall Street Journal article dated August 10, 1994. Once the "Main Floor" program made its broadcast debut on September 11, 1994, Petitioners viewed the program and found it did not inform viewers of the actual nature of the program because of inadequate sponsorship identification. A tape containing the September 11 and September 25 episodes is

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included with this letter. As can be seen from the tape, the program's format is extremely deceptive to viewers because sponsored and unsponsored segments are virtually indistinguishable. Without continuous sponsorship identification, it is difficult for viewers to identify the when segments are sponsored and by whom.<sup>1</sup>

NIMA argues that "Main Floor" is an isolated instance and, as such, should not command the Commission's attention. (*NIMA Letter* at 3.) This simply is not true. "Main Floor" is one of several examples of infomercials and advertorials leading to consumer confusion. Thus, for example, the Walt Disney Co. has recently adopted a newscast format in order to promote its films. Disney's "'Movie News' looks just like the entertainment news segment of a TV newscast." ("Disney Blurs the Line Between Ballyhoo and Broadcasting," *Washington Post*, July 5, 1994 at E1.) Other examples are discussed in the Comments on Limitations on Commercial Time on Television Broadcast Stations, filed by CSC et al., December 20, 1993, at 9.<sup>2</sup>

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<sup>1</sup> As the enclosed videotape shows, even where disclosures were made during the September 11 and 25 episodes of "Main Floor", they were inadequate because they were not heard in full and used vague wording which did not convey to the viewer that the segments were paid for by a sponsor. Furthermore, several segments that were not identified as being sponsored, exclusively highlight a particular brand name product. For, example, on September 25, a segment promoting "Kenneth Cole" shoes was aired. Even though "Kenneth Cole" was named in a Wall Street Journal article as one of many sponsors who paid \$25,000 to have its merchandise included in a promotional segment on "Main Floor", no sponsorship identification was made with regard to this segment. ("Is it a show or is it Advertising?", *Wall Street Journal*, Aug. 10, 1994 at B1.) Petitioners' attempted repeatedly to contact Alton Entertainment, the producer of "Main Floor", to determine whether this segment and others like it were paid for, but no one at the production company has returned the calls. Therefore, we ask that the Commission initiate an investigation of the "Main Floor" program for lack of compliance with sponsorship disclosure requirements.

<sup>2</sup> These include: Bell Atlantic's "The Ringers", an infomercial using a situation comedy format, including main characters, a storyline, and even a theme song to sell telephone services; and the Tums' half-hour "documercial" during which the importance of calcium for women was pitched to stations to run as a regular program in which the station could sell ads.

NIMA confuses Petitioners' Infomercial Petition with another unresolved petition involving product placement. (*NIMA Letter* at 3.) The problem of product placement within programs, however, has not yet been resolved by the Commission, although a petition asking it to do so was filed in 1989.<sup>3</sup> Therefore, whether viewed as a program length commercial or a product placement problem, in either case, guidance from the Commission is urgently needed in order to protect television viewers from being exploited and deceived.

The remainder of NIMA's letter merely rehashes old arguments raised in their opposition to the Infomercial Petition. (See NIMA's Opposition to Petition, June 10, 1992.) First, NIMA claims that the cause for the initial concern with program length commercials no longer exists because most infomercials carried by broadcast stations today comply with the NIMA Marketing Guidelines. (*NIMA Letter* at 2; See CSC *et al.*'s Reply Comments to NIMA's Opposition at 5, for a discussion of this issue.) However, the NIMA Guidelines are irrelevant because not all producers of infomercials are members of NIMA.<sup>4</sup> Furthermore, even if there is compliance with the NIMA Guidelines, the Guidelines themselves are inadequate. (See CSC *et al.*'s Reply Comments to NIMA's Opposition at 5.) The NIMA Guidelines only require that each infomercial be preceded and concluded with a clear and prominent written or oral announcement that the program is a paid for advertisement.

Finally, NIMA argues that Petitioners should direct their complaints to the Federal Trade Commission ("FTC"). (*NIMA Letter* at 3.) However, Petitioners' concern is with inadequate sponsorship identification under Sections 317 of the Communications Act of 1934 and 73.1212 of the FCC rules which command that a sponsorship announcement "fully and fairly disclose" the true identity of a sponsor. Whether "Main Floor" complies with the FTC requirements for disclosure of paid for advertisements is a completely separate issue.

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<sup>3</sup> See Petition to Institute Notice of Inquiry Concerning Sponsorship Identification for Product Promotions, filed by United Church of Christ and Action for Children's Television, January 19, 1989.

<sup>4</sup> It should be noted that, in a letter to the Center for the Study of Commercialism, Alton Entertainment, stated that it does not consider "Main Floor" to be an infomercial. Thus, it can be assumed that Alton did not consult the NIMA Guidelines with regard to "Main Floor".

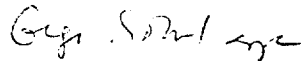
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In sum, nothing in NIMA's letter assuages Petitioners' concern that "Main Floor" is another program that misleads viewers because of inadequate sponsorship identification. Therefore, Petitioners request that the Commission issue an immediate public notice advising broadcast licensees and cable operators carrying the "Main Floor" program that contemporaneous sponsorship identification of each sponsored segment on that program is required. Moreover, because the blurring of advertisement with programming is not isolated to "Main Floor", Petitioners further request that the Commission grant the relief requested in the Infomercial Petition which has been pending since January 3, 1992.

Sincerely,



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